IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 22ND JUNE 2007 / 1ST ASHADHA 1929

WP(C).No. 17855 of 2007(A)

PETITIONER:

M/S.TVS INTECONNECT SYSTEMS LTD,
'MEENA MADHAVAM', OPP.BHAVANS VIDYA MANDIR,
DESHABHIMANI ROAD, ELAMAKKARA (PO)
ERNAKULAM - 26.
REPRESENTED BY ITS KERALA CIRCLE HEAD-
MR.SUNIL MENON.

BY ADV. SRI.SANTHOSH MATHEW,
SRI.SATHISH NINAN.

RESPONDENTS:
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1. **THE VADAVUKODE-PUTHENCRUZ GRAMA PANCHAYATH (SPECIAL GRADE), PUTHENCRUZ P.O, ERNAKULAM DISTRICT-682308, REPRESENTED BY ITS SECRETARY.**

2. **THE SPECIAL GRADE SECRETARY, VADAVUKODE-PUTHENCRUZ GRAMA PANCHAYATH (SPECIAL GRADE), PUTHENCRUZ P.O, ERNAKULAM DISTRICT-682308.**

3. **SRI.K.Y.JOSHY, KEERIKKATTIL HOUSE, VADAVUKODE PO, PUTHENCRUZ, ERNAKULAM DISTRICT-682310.**

BY ADV. SRI.V.RAJENDRAN (PERUMBAVOOR),
SRI.GEORGE VARGHESE KIZHAKKAMBALAM,
SRI.C.N.PRABHAKARAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 22/06/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.17855/2007:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE CERTIFICATE NO. A2-140/2007 DTD. 16/05/2007 ISSUED BY THE R.1.

EXT.P.2: COPY OF THE CASH RECEIPT ISSUED BY THE R.1. TO THE PETITIONER.

EXT.P.3: COPY OF THE COMMUNICATION DTD. 04/06/2007 ISSUED BY THE R.1. TO THE PETITIONER.

EXT.P.4: COPY OF THE JUDGMENT IN RELIANCE INFOCOMM V. CHEMANCHERRY GRAMA PANCHAYAT REPORTED IN 2006 (4) KLT 695.

EXT.P.5: COPY OF THE JUDGMENT IN W.P.(C).NO .8630/07 DTD. 26/03/2007 IN W.P.(C). NO. 7324/2007 OF THIS HONOURABLE COURT.

EXT.P.6: COPY OF THE INTERIM ORDER IN W.P.(C). 22063/06 DTD. 18/08/2006.

EXT.P.7: COPY OF THE SOIL INVESTIGATION REPORT OF THE M/S. INFRATEL SOLUTIONS.

EXT.P.8: COPY OF THE STABILITY CERTIFICATE DTD. 23/05/07 OF M/S. INFRATEL SOLUTIONS.

RESPONDENT'S EXHIBIT:

EXT.R1.A: COPY OF THE MASS PETITION DTD. 31/05/2007 SUBMITTED BY THE LOCALE TO THE R.1.

EXT.R1.B: COPY OF THE PETITION DTD. 31/05/2007 THE SUBMITTED BY THE R.3. TO THE R.1. WITH COPIES TO DISTRICT COLLECTOR ETC.,

EXT.R3.A: PHOTOGRAPH.

//TRUE COPY//

prv.

K. M. JOSEPH, J.

W.P.C. NO. 17855 OF 2007 A

Dated this the 22nd June, 2007

JUDGMENT

Petitioner challenges Ext.P3. Case of the petitioner, in brief, is as follows:

Petitioner was permitted to put up a telecommunication tower. Ext.P3 is issued, however, cancelling the same. One of the contentions raised by the petitioner is that it is done without any notice to the petitioner. I heard the learned counsel appearing for the petitioner, learned counsel appearing for the respondent Panchayat, and also the learned counsel appearing for the third respondent. A perusal of Ext.P3 would show that on the basis of a complaint received against the construction of the telecommunication tower, the Panchayat has proceeded to cancel the licence. There is no case for the respondent Panchayat that the licence was cancelled after giving any notice to the petitioner. Therefore, the admitted position is that the legal right obtained by petitioner under Ext.P1 is taken away

without complying with the bare principles of natural justice. This is impermissible. Therefore, the impugned order is liable to be quashed. Of course, learned counsel for the Panchayat submits that there is power under Section 235(o) of the Kerala Panchayat Raj Act. Section 235(o) speaks about the power of the Secretary to stop construction, or re-construction of any building if in his opinion the work in progress is dangerous to human life. I do not think that the wording of Ext.P3 would give any right to the respondent Panchayat to contend that the Panchayat is justified in invoking Section 235(o) of the Act. Learned counsel for petitioner points out that there is no prima facie finding given in Ext.P3 that the construction is dangerous to human life. Counsel for third respondent also points out that the construction is being made in the manner which is deprivative of lateral support. Of course, counsel for petitioner would point out that the question relating to the danger in the construction of the telecommunication tower is no longer res intera as it is covered by the decision of a Division Bench in

Reliance Infocomm v. Chemancherry Grama Panchayat (2006 (4) KLT 695). At any rate, as far as this Court is concerned, it is clear that Ext.P3 cannot be sustained on the sole ground that it is in violation of the principles of natural justice. Accordingly, Ext.P3 is quashed for the reason that Ext.P3 is passed without notice to the petitioner. Needless to say, I make it clear that it will be open to the respondent Panchayat to take steps against the petitioner in the matter of Ext.P1, if it is so advised, after affording an opportunity of hearing to the petitioner. In the event of the respondent proceeding to take action in the matter, the respondent Panchayat will hear the third respondent also.

The Writ petition is disposed of as above.

K. M. JOSEPH, JUDGE

kbk.